

MAY 22 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN C. MONTUE,

Petitioner - Appellant,

v.

DEPARTMENT OF CORRECTIONS,

Respondent - Appellee.

No. 06-15452

D.C. No. CV-98-01580-LKK

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Lawrence K. Karlton, District Judge, Presiding

Submitted May 20, 2008^{**}

Before: PREGERSON, TASHIMA, and GOULD, Circuit Judges.

California state prisoner John C. Montue appeals pro se from the district court's order dismissing his 28 U.S.C. § 2241 petition, in which he challenged the

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Board of Prison Terms' 1997 decision finding him ineligible for parole. We have jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253, and we affirm.

Notwithstanding this court's November 22, 2004, order, we conclude that the district court did not err by refusing to permit Montue to challenge the denial of parole in a 28 U.S.C. § 2241 petition, because such a challenge is only properly brought in a 28 U.S.C. § 2254 petition. *See Sass v. Cal. Bd. of Prison Terms*, 461 F.3d 1123, 1126 (9th Cir. 2006).

All pending motions are denied as moot.

AFFIRMED.